

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re : Douglas LeCrone, Daniel A. Murphy and Denis Hall
Serial No. : 10/692,285
Filed : October 23, 2003
FOR : METHOD AND APPARATUS FOR MONITORING UPDATE
ACTIVITY IN A DATA STORAGE FACILITY
EXAMINER : Khanh Pham
ART UNIT : 2125

April 16, 2007

DECLARATION OF GEORGE A. HERBSTER

I, George A. Herbster (Reg. No. 24,002), declare that:

1. I am submitting this Declaration in connection with a Petition to Revive an Abandoned Application.
2. Based upon a search of the file jacket for the above-identified application and related applications and the docket records, I conclude that a Notice of Non-Compliant Amendment dated August 10, 2006 was not received at our offices.
3. I understand that the U.S. Patent and Trademark Office requires that a copy of the docket record showing where the non-received Office communication would have been entered had it been received must be submitted. As described below, that information is now in an archive file that is not in a clear text format. In lieu of that, the following describes the operation of our docketing system and the results of my inspection.
4. The docketing system in use in this office records the receipt of a non-final Office Action in an active calendar

file as follows:

- a. The docket clerk enters a Serial No.;
- b. The system returns information for that serial number for verification by the docket clerk;
- c. The docket clerk enters the date of the Office Action and the number of months for the response;
- d. The system calculates (1) the Response Date, (2) a TODO date one month in advance of the Response Date, and (3) Extended Response Dates for each month for which the response could be extended. That is, for a notice of non-compliant amendment, there would be a one-month response date and an extended response date for each of the second through sixth months.
- e. The system also composes messages that identify the office action name and date, the required response and Response Date and the docket number. The message with the TODO date is stored in a TODO file for the TODO date. The message for the Response Date is stored in a Memo file for the Response Date. The messages for the Extended Response Dates are stored in the Memo file for their respective Extended Dates, along with notice of which extension is involved.
- f. The TODO file is cumulative. That is, on any day it contains a list of all messages that relate to any active item that appears on that day or appeared on a prior day. So a response first begins to appear on the TODO list one month in advance of the Response Date and continues to appear on that TODO list until the response is submitted.
- f. When a response is submitted, the docket clerk marks the message in the file as completed.
- g. The next time the system opens the calendar on any following day, a part of its process is to identify

any marked TODO messages. Any such message remains in the TODO list for the prior day. It no longer appears on the TODO list because it is no longer an active item.

- h. Each time the system opens the calendar, it also moves all entries for dates more than 90 days prior to the date to an archive file.
- 5. If the Notice of Non-Compliant Amendment had been received the system would have made entries on that date and on the dates of September 10, October 10, November 10 and December 10, 2006 and on January 10 and February 10, 2007. The only date still in the active file is February 10, 2007. A print out of that page is attached as Exhibit 1.
- 6. I have been unable to determine a method for retrieving the data in the archive file in a meaningful output.
- 7. I have reviewed the active and archive calendar files for any entries related to docket E30-033CON by reviewing any entry containing "033) found only two entries for E30-033CON (in the archive file; see Exhibit 2). Paraphrased, these entries are:
 - a. E30-033CON response to missing parts due March 27, 2004; filed via fax 2/9/04
 - b. E30-033CON response due 8/3/2006 to OA 5/3/2006 SN 692,285 10/12/692/, filed 8/3/06
- 8. Other entries exist in the calendar files with the character string "033." Some relate to docket E30-033, the parent of the above-identified application. The other entries relate to dockets for other clients. None relate to any document that could be the Notice of Non-Compliant Amendment.
- 9. Given this review it is my conclusion that no entry was made in the files for E30-033CON after the response was filed on August 3, 2006 and that no entry was made for the

Notice of Non-Compliant Amendment.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature: /George A Herbster/

Typed Name: George A Herbster

E30-033CON

EXHIBIT 1
TO
DECLARATION OF GEORGE A. HERBSTER
IN
PETITION TO REVIVE APPLICATION BASED ON A FAILURE TO RECEIVE
OFFICE ACTION

FEBRUARY 10, 2007 DOCKET SYSTEM PRINTOUT

Saturday, February 10, 2007

E30-033CON

EXHIBIT 2

TO
DECLARATION OF GEORGE A. HERBSTER
IN
PETITION TO REVIVE APPLICATION BASED ON A FAILURE TO RECEIVE
OFFICE ACTION

CALENDAR ARCHIVE EXTRACTED PRINTOUTS

E30033CON response to miss parts due
3/27/04; filed via fax 2/9/04

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E30033CON 5 Resp due • /3/2006 • to OA
(5/3/2006) 5 SN 692,285 (10//12/692,)
filed 8/3